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No. 06-1066

Supreme Court, U.S.
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In The
Supreme Court of the United States

ANTHONY GARNER, ET AL.,

Petitioners,

vs.

CUYAHOGA COUNTY JUVENILE COURT, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Petitioners present the following question for review:

Whether under the standard for Civ. R. 56, petitioners in a race discrimination case are denied their due process and equal protection rights by the lower courts weighing evidence and excluding relevant admissible evidence, which decision directly contradicts this court's prior decision in *Reeves v. Sanderson Plumbing Products, Inc.*, (2000), 530 U.S. 133.

LIST OF ALL PARTIES TO THE PROCEEDINGS IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The following nine (9) petitioners were plaintiffs/appellants in the proceedings before the United States Court of Appeals for the Sixth Circuit:

Anthony Garner
Tiffanie Dennis
Sonja Colwell
Patricia McNear
Shelley Isom
Heather McCollough
Thomas Washington
Spencer Bellamy
Terrance Jenkins

The following four (4) persons were plaintiffs/appellants in the proceedings before the United States Court of Appeals for the Sixth Circuit but are not petitioners here:

Vanessa Brown
Monique Moore
Nathaniel Prather
Bruce Richardson

Though initially a plaintiff/appellant, Rayshunn Lilly was dismissed as a party during the course of the appeal and is not a petitioner here.

LIST OF PARTIES TO THE PROCEEDINGS IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT – Continued

The following five (5) respondents were defendants/appellees in the proceedings before the United States Court of Appeals for the Sixth Circuit:

Cuyahoga County Juvenile Court
Administrative Judge Joseph F. Russo
Kenneth J. Lusnia
Leonard Munks
Donna Coe
Angelo Lardomita

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit was not reported for official publication as *Anthony Garner, et al. v. Cuyahoga County Juvenile Court, et al.*, Case No. 05-3476. It appears in the Appendix to the Petition for Writ of Certiorari at App. 1a.

The ruling of the United States Court of Appeals for the Sixth Circuit that denied the petition for rehearing en banc also was not reported for official publication. It appears in the Appendix to the Petition for Writ of Certiorari at App. 13a.

The fourteen (14) separate opinions and orders of the United States District Court for the Northern District of Ohio, Eastern Division, granting summary judgment in favor of the respondents on the claims asserted by each of the fourteen (14) plaintiffs in the trial court, including those of the nine (9) petitioners here, were not reported for official publication. Contrary to the statement contained in the petition for writ of certiorari, these opinions are *not* contained in the Appendix to the Petition for Writ of Certiorari.

The District Court's judgment entry granting judgment in favor of the respondents and against the petitioners (and the other plaintiffs) pursuant to Fed.R.Civ.P. 58(a) appears in the Appendix to the Petition for Writ of Certiorari at App. 12a.

JURISDICTION

The judgment of the Court of Appeals was entered on August 2, 2006. The order of the Court of Appeals denying the petition for rehearing en banc was entered on October 31, 2006.

The Petition for Writ of Certiorari was filed in the Supreme Court of the United States on January 26, 2007. Petitioners invoke this Court's appellate jurisdiction pursuant to 28 U.S.C. § 1254.

STATEMENT OF THE CASE

The Court of Common Pleas for Cuyahoga County, Ohio, Juvenile Division, oversees the operations of the Cuyahoga County Juvenile Court and the Juvenile Detention Center, in which alleged or adjudicated juvenile delinquents may be detained pending court proceedings.

In 2002, fourteen (14) current or former employees of the Cuyahoga County Juvenile Court Detention Center filed three (3) separate lawsuits in the Court of Common Pleas for Cuyahoga County, Ohio, General Division. The lawsuits were civil damages actions in which the plaintiffs alleged that various officials and/or employees of the Cuyahoga County Juvenile Court and Detention Center had violated the plaintiffs' rights under the 14th Amendment to the United States Constitution and 42 U.S.C. § 1983 by engaging in discriminatory employment practices. The plaintiffs additionally asserted claims arising under Ohio state law.

All three (3) state court lawsuits were removed to the United States District Court for the Northern District of

Ohio, Eastern Division, pursuant to 28 U.S.C. § 1441 *et seq*. They were assigned to one (1) United States District Court judge and proceeded at least for purposes of discovery as essentially one case comprised of fourteen (14) plaintiffs.

The following fourteen (14) individuals ultimately pursued their claims as plaintiffs in the District Court: Anthony Garner; Tiffanie Dennis; Sonja Colwell; Patricia McNear; Shelley Isom; Heather McCollough; Thomas Washington; Spencer Bellamy; Terrance Jenkins; Rayshunn Lilly; Vanessa Brown; Monique Moore; Nathaniel Prather; and Bruce Richardson.[1] Although there were ten (10) defendants named initially, the plaintiffs ultimately pursued their claims against the following five (5) defendants who are now respondents: Cuyahoga County Juvenile Court, through its Administrative Judge Joseph F. Russo; Kenneth J. Lusnia; Leonard Munks; Donna Coe; and Angelo Lardomita.

Following a period for discovery, the defendants jointly filed a motion for summary judgment for each of the fourteen (14) plaintiffs to address each individual plaintiff's federal and state law claims. The plaintiffs filed an opposing memorandum accompanied by affidavits and

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[1] Although there were still fourteen (14) plaintiffs by the time the District Court granted the defendants' motions for summary judgment, only thirteen (13) plaintiffs pursued an appeal to the Sixth Circuit Court of Appeals (because plaintiff Lilly was dismissed from the case during the appeal), and only nine (9) plaintiffs are now petitioners before this Court (with plaintiffs Brown, Moore, Prather, and Richardson seemingly having abandoned their claims). This Brief in Opposition will accordingly identify those plaintiffs seeking review here as *petitioners*, in contrast to those former plaintiffs who are not seeking review here.

exhibits. The District Court, on its own initiative, subsequently allowed the plaintiffs to file an additional memorandum in opposition to the defendants' motions for summary judgment, which they did, though the court later denied the plaintiffs' further motion to "update affidavits and exhibits" because the deadline for filing such matters had long since passed.

Thereafter, in fourteen (14) separate memorandum opinions entered over the period from November 18, 2004 through March 11, 2005, the District Court analyzed each individual plaintiff's claims. As stated by the Court of Appeals in its opinion, the District Court held that petitioners Garner, Dennis, Isom, Washington, and Bellamy (and plaintiffs Lilly, Brown, Moore, and Richardson) had failed to present *any* evidence to support their federal and state law claims of racially motivated employment discrimination. See Petition, Appendix at 10a (emphasis in original). The District Court further held that petitioners Colwell, McNear, McCollough, and Jenkins (and plaintiff Prather) had failed to present *sufficient* evidence to support their employment discrimination claims. See Petition, Appendix at 10a (emphasis in original). Determining that there were no material issues of fact and that the defendants were entitled to judgment as a matter of law, the District Court entered summary judgments in favor of the defendants as to each individual plaintiff.

In separate proceedings that remain pending in the District Court, the trial court granted the defendants' motion for an award of attorney's fees and costs under 42 U.S.C. § 1988 after determining that most of the claims of petitioners Garner, Dennis, Isom, McNear, Bellamy, and Washington (together with those of plaintiffs Richardson, Brown, and Moore) "were frivolous, unreasonable, and

without foundation, and that the plaintiffs should have dismissed these claims, at the latest, after discovery had shown that they were without evidentiary support."

For their appeal to the Sixth Circuit Court of Appeals, the plaintiffs/appellants argued that the District Court let the defendants exceed the 30-page limit for their motions for summary judgment but supposedly did not let the plaintiffs exceed the 30-page limit for their opposing memoranda. The plaintiffs/appellants also argued that the District Court erroneously denied their motion to strike the defendants' memoranda that exceeded the 30-page limit. They further contended that there were genuine issues of material fact and accused the trial court of, among other things, having weighed the evidence. The plaintiffs/appellants additionally complained that the District Court granted time extensions to the defendants but did not grant time extensions to the plaintiffs.

On appeal, the Sixth Circuit Court of Appeals first rejected all challenges to the District Court's procedural rulings. Proceeding to the merits, the Court of Appeals succinctly stated:

> Although the employees argue that the district court ignored or "changed" important evidence of racial discrimination on the part of [respondents], this contention is unsupported by the record. The district court engaged in a careful analysis of the facts as they pertained to each employee's claims, and it determined that the allegations of racial discrimination and other unlawful behavior were unfounded. In their brief, the employees continue to proffer the same assertions raised below, failing in almost all instances to cite to the record. Not only do the employees fail to base their allegations on facts in

> the record, they also fail to offer any relevant criticism of the district court's legal analysis.
>
> Because the reasoning that supports summary judgment for [respondents] has been clearly articulated by the district court in its thorough and well-written opinions, and because we are unpersuaded by the employees' argument that the court displayed favoritism and bias in rendering its procedural orders, the issuance by us of a detailed written opinion would be unduly duplicative. The summary judgment orders rendered by the Honorable John R. Adams, Judge of the United States District Court for the Northern District of Ohio, are accordingly **AFFIRMED** on the basis of the reasoning detailed in his Opinions.

See Petition, Appendix at 10a-11a.

ARGUMENT

Respondents respectfully urge this Court to deny the petition for writ of certiorari because the decision by the Sixth Circuit Court of Appeals does not present any substantial issue of national significance that would warrant further review.

In particular, the petitioners' employment discrimination claims alleging disparate treatment and disparate impact did not present any particularly novel issues for consideration. Addressing the petitioners' contention that the District Court unfairly applied page limitations, the Court of Appeals pointed out that page limitations applied only to legal briefing but did not apply to evidentiary exhibits and that the District Court on its own initiative

even granted the petitioners additional pages for their legal memoranda opposing the motions for summary judgment, though the petitioners failed to take full advantage of that allowance. The Court of Appeals likewise rejected as utterly unsubstantiated the petitioners' accusations that the District Court judge's decisions were racially motivated, noting that the trial court responsibly managed a case that in truth consisted of fourteen (14) different cases brought by plaintiffs asserting individual and factually distinct claims. Considering the merits of the petitioners' claims, the Court of Appeals noted that the petitioners failed to substantiate their claims with citations to the record and additionally failed to offer any relevant criticism of the District Court's sound legal analysis.

The petition now before this Court similarly fails to offer any relevant criticism to the Court of Appeals' decision that would justify further review by this Court based on any of the considerations described under Rule 10(a) of the Rules of the Supreme Court of the United States. In particular, the petition does not suggest that the Court of Appeals' decision is in conflict with the decision of another United States court of appeals on any important question. The petition likewise does not suggest that the Sixth Circuit decided an important federal question in a way that conflicts with a decision by a state court of last resort. Nor is there any basis to say that the Sixth Circuit's ruling has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

For their part, the petitioners say that this case will present the question of whether the petitioners were

denied due process and equal protection "by the lower courts weighing evidence and excluding relevant admissible evidence, which decision directly contradicts this court's prior decision in *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000)." Contrary to the petitioners' assertion, this case presents none of those issues.

First, there is no suggestion in the decision by the Court of Appeals (nor in any of the fourteen separate decisions rendered by the District Court) that the lower courts "weighed" evidence when determining whether to grant or affirm summary judgment. To the contrary, the decisions confirm that the lower courts properly examined all of the evidence of record before determining that the petitioners had failed to present any or at least sufficient evidence to support their employment discrimination claims. Neither the District Court nor the Court of Appeals "weighed" the evidence. At any rate, the standard for reviewing evidence in summary judgment motion practice under Rule 56 of the Federal Rules of Civil Procedure is well established and does not require further exposition by the Court in this case.

Second, the petition does not identify the "relevant admissible evidence" that was supposedly excluded by the lower courts. The petitioners did not make this argument to the Court of Appeals, nor did the Court of Appeals address, much less have any reason to address, the supposed exclusion of evidence. To the extent that the petitioners belatedly sought without excuse to "update" their exhibits and affidavits after the expiration of the trial court's deadline to supplement the evidentiary record, the petitioners' failure to submit evidentiary materials timely within the trial court's already extended deadline was not

an improper exclusion of evidence by the trial court. In any case, this again does not present any issue demanding review by this Court.

Third, there no basis whatsoever for the petitioners to suggest that the Court of Appeals' decision "directly contradicts" this Court's decision in *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000). In *Reeves*, the Court held that because the petitioner had established a prima facie case of age discrimination, introduced enough evidence for the jury to reject the respondent's explanation, and produced additional evidence of age-based animus, there was sufficient evidence for the jury to find that the respondent had intentionally discriminated.

In the matter at hand by contrast, the petition now before this Court does *not* include in its appendix any of the District Court's detailed memorandum opinions that methodically analyzed each of the petitioners' claims. Had those memorandum opinions been provided, they would show that the District Court in fact determined that petitioners Garner, Dennis, McNear, Isom, Washington, and Bellamy had failed to establish even a prima facie case of discrimination on *any* of their claims; that petitioners Colwell and Jenkins had each failed to establish a prima facie case of discrimination on all of their claims except for one denied job position; and that petitioner McCollough had failed to establish a prima facie case of discrimination on all of her claims except for two denied job positions. And as to those positions for which petitioners Colwell, Jenkins, and McCollough had at least established a prima facie case, the District Court ultimately determined that these petitioners failed to introduce evidence to question the respondents' legitimate nondiscriminatory explanation.

Thus unlike the discharged employee in *Reeves* who established a prima facie case of age discrimination, introduced enough evidence for the jury to reject the employer's explanation, and produced additional evidence of age-based animus, the petitioners in the case at bar failed to produce sufficient evidence to support any of their claims. Moreover, the petitioners' initial and reply briefs in the Court of Appeals did not argue to the Court of Appeals that the District Court's rulings were contrary to *Reeves*. The petitioners made this argument only in their petition for rehearing en banc and only in conclusory fashion without discussion or analysis. The Court of Appeals' decision does not even cite *Reeves* to suggest that it was material to the disposition of this case. Nor have the petitioners demonstrated here that the Court of Appeals' decision is in any way inconsistent with *Reeves*. In short, there is nothing about the decisions rendered in this case that have any connection to *Reeves*, so there is no factual or legal basis for the question that this petition ostensibly presents.

Though not expressly within the scope of the question presented by the petition, the petitioners additionally argue that the Court of Appeals' decision conflicts with *Burlington Northern & Santa Fe Railway Co. v. White*, ___ U.S. ___, 126 S.Ct. 2405, 165 L.Ed.2d 345 (2006), which was decided prior to the Court of Appeals' decision under review here. This argument again was not asserted by the petitioners prior to the Court of Appeals' decision and again was raised by the petitioners only in their petition for rehearing en banc and only in conclusory fashion without discussion or analysis. In any case, the petition utterly fails to articulate any grounds for this Court to review claims that were examined thoroughly by the

District Court and again by the Court of Appeals, each of which determined that the evidence presented was woefully insufficient.

In sum, the cases presented by these nine (9) petitioners are necessarily fact bound by their individual and particular circumstances. There is nothing remarkable legally about the claims asserted in this case. Neither the claims presented by these petitioners nor their legal arguments contesting the lower court decisions present any issue that is of constitutional dimension or of great national significance. The Sixth Circuit Court of Appeals decided this case appropriately by carefully considering the petitioners' procedural and substantive challenges to the District Court's rulings before determining that the petitioners had failed to demonstrate any error by the trial court. The petitioners have similarly failed here to exemplify any error by the Court of Appeals in its determination of this case or to present any substantial issue deserving the review of this Court. There is accordingly no reason for further judicial resources to be expended on these cases.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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